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Tobacco tax plan prompts warning

OPPONENTS SAY STATE COULD LOSE MONEY

By Bruce Schreiner
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FRANKFORT - Representatives of some cigarette makers warned lawmakers yesterday that a proposed overhaul of the way Kentucky collects money from tobacco manufacturers under a national settlement could leave the state empty-handed.

They flatly predicted that a proposal for tobacco companies to pay a flat tax of about $4 a carton on all cigarettes sold in Kentucky would be challenged in court.

The proposed flat tax is being advocated by some small tobacco manufacturers that did not sign the national settlement in which tobacco companies agreed to make payments to states to cover smoking-related costs. The proposal is being floated as a substitute for current assessments under the Master Settlement Agreement in which participating tobacco companies make payments to nearly all states.

The critics of the proposed tax said it would violate the Master Settlement Agreement. That could cost Kentucky the roughly $113 million it now gets each year under the MSA, plus the revenue projected from the flat tax, the cigarette makers said.

"It is an extraordinarily bad deal for Kentucky," Rep. Rob Wilkey, D-Scottsville, told the Senate Appropriations and Revenue Committee.

Gene McLean, a lobbyist for non-participating manufacturers pushing for the flat tax, said in an interview that the opponents had resorted to "scare tactics."

McLean said it was inappropriate for opponents to "opine as to what is legal or illegal or constitutional or unconstitutional when they haven't even seen the bill yet." He said supporters hope to have a bill introduced in the next week.

Proponents say the flat tax would generate a $130 million windfall for Kentucky each year. They say the state is being shortchanged by the national settlement's formula, which they contend sends a disproportionate amount of money to populous states.

Wilkey countered that the flat tax would result in a "double tax" for tobacco manufacturers that joined the national settlement.

He said the proposal wouldn't relieve the participating manufacturers from making their MSA contributions in Kentucky. That, he said, would result in a "permanent competitive price advantage" for cigarette makers that didn't join the MSA.

In Kentucky, tobacco companies that did not join the MSA pay about $4 a carton into escrow accounts. Portions of the money would start to be refunded in 25 years if the states didn't sue them over health-care costs.

Wilkey -- general counsel of cigarette manufacturer Commonwealth Brands Inc., which joined the MSA -- said the non-participating manufacturers were using "fuzzy math" to project a revenue windfall for Kentucky if the flat tax passed.

Bob Brookhiser, outside counsel for Commonwealth Brands, said the flat tax would violate the MSA by increasing payments from participating manufacturers.

He said it also would violate constitutional restrictions that prevent states from passing laws impairing the obligations of contracts.

As a result, he said, Kentucky could wind up not getting any revenue from the flat tax, and "it might lose its MSA payments in its entirety."

Manufacturers that joined the MSA also could seek restitution of payments to the state, he said.